

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

AMERICAN ZURICH INSURANCE
COMPANY,

Plaintiff,

v.

ALBERT & JACK INC., et al.,

Defendants.

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CIVIL ACTION NO. 06-4570 (MLC)

MEMORANDUM OPINION

THE PLAINTIFF bringing this action in state court to recover damages for failure to pay premiums on an insurance policy (Compl.); and the defendants removing the action to this Court on September 25, 2006, based on jurisdiction under 28 U.S.C. § ("Section") 1332, as (1) the plaintiff is an Illinois citizen, (2) the defendant Albert & Jack Inc. ("AJI") is a New Jersey citizen, and (3) the defendant Albert DiFiore is a Florida citizen (Rmv. Not.); and the plaintiff moving to remand the action on October 19, 2006, arguing that removal was barred under Section 1441(b) because AJI is a New Jersey citizen (dkt. entry no. 7, Pl. Br., at 3-4); and it appearing that the plaintiff's argument is correct, see 28 U.S.C. § 1441(b) (stating action that could have been brought initially in federal court under Section 1332 is "removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought"), Bor. of W. Mifflin v. Lancaster, 45 F.3d 780, 785 (3d Cir. 1995) (stating "[u]nder §

1441(b) diversity cases have an additional obstacle to removal: a resident defendant is barred from removing to federal court"); and it appearing that the plaintiff moved in a timely manner, see 28 U.S.C. § 1447(c) (stating objection to removal for defect other than lack of subject matter jurisdiction to be raised within 30 days of filing of notice of removal); and

THE PARTIES now notifying the Court that they have "consented to the remand of this action to [state court]" (dkt. entry no. 11, Consent Notification); and the Court thus intending to grant the motion, and remand the action; and for good cause appearing, the Court will issue an appropriate order and judgment.

s/ Mary L. Cooper
MARY L. COOPER
United States District Judge